

### **III. REMARKS**

Claims 1-8, 10-23, and 25-31 are pending in this action. By this Amendment, the specification and claims 1, 8, 10, 16, 23, 25-27, 28, and 30-31 have been amended; claims 9 and 24 have been canceled. The amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the objections and rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the above amendments and following remarks is respectfully.

In the Office Action, claims 8-15 and 31 are rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. The Office asserts that claims 8-15 are nominally directed a system/apparatus and are allegedly directed to only software. Specifically, the Office asserts that both the query computer component and the status computer component may be software. With respect to claim 31, the Office similarly asserts that the claim is nominally directed to a system and is allegedly directed to only software. Applicants have amended claims 8 and 31 to disclose “a computer device” and contend that the amended claims comply with the Office’s interpretation of statutory subject matter. Accordingly, Applicants request that the Office withdraw the rejection.

In the Office Action, claims 1-31 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Eden (US Publ. No. 2002/0184361) in view of Peterson et al. (US Publ. No. 2004/0010584). Applicants submit that the claimed subject matter is allowable for the reasons that follow.

With respect to the independent claims 1, 8, 16, 23, and 31, Applicants contend that Eden in view of Peterson does not disclose each and every feature of the claimed invention. For example, Eden in view of Peterson does not disclose, *inter alia*, “in the case that the status indicator indicates that the network resource is available, determining whether a **query** of the network resource **to determine network resource availability and response time** is occurring,” as recited in claim 1 and similarly recited in the remaining independent claims. (Emphasis added). The Office asserts that this feature is taught by Peterson “as a dampening window whereby the result (available) will not be indicated while the query is occurring” and cites to paragraphs [0012]-[0013] of Peterson. See Office Action, page 5. The Office maintains that the dampening window of Peterson discloses determining that “no test (query) is presently occurring.” See Office Action, page 5. However, Applicants respectfully disagree with the Office’s assertion. The claimed invention provides that the query of the network resource is to determine the network resource availability and response time. The test in Peterson is directed to “maintaining and reporting on error states.” See Peterson, paragraphs [0002], [0012], [0013]. Clearly, the test in Peterson does not teach or suggest the query of the claimed invention. Further, Applicants assert that the Office does not specifically show how Peterson teaches the feature that the “determining” occurs if it is “in the case that the status indicator indicates that the network resource is available.” Accordingly, combining Peterson with Eden would not teach or suggest each and every feature of the claims.

As such, Applicants maintain that independent claims 1, 8, 16, 23, and 31 are in condition for allowance. Since claims 2-7, 10-15, 17-22, and 25-30 depend from the independent claims, Applicants also maintain that these claims are also in condition for allowance. Applicants respectfully request that the Office withdraw the rejection of these claims.

In view of the foregoing arguments, Applicants respectfully submit that the application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in better condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

/Spencer K. Warnick/

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